MONTANA LEGISLATIVE HISTORY

Chapter 146 19 75

Bill H 399 S _____ Original bill & history ✓ C

H. Committee on Labor & Employment Relations		S. Committee on Local Government	
Hearing Date(s) Feb 19	✓ C	Hearing Date(s) March	✓ C
Feb 24	✓ C	_____	____ C
_____	____ C	_____	____ C
_____	____ C	_____	____ C
Date Out _____	____ C		

Did this bill originate in an interim committee? ____ Yes ____ No

Committee _____ Report _____

LC 0917

House BILL NO. 399

INTRODUCED BY Robbins Eggesinger Day McFadden
Gee Hanson Fabinger

A BILL FOR AN ACT ENTITLED: "AN ACT TO REVISE THE POWERS OF THE COMMISSION SUPERVISING A CITY DEPARTMENT OF PUBLIC SAFETY; TO ESTABLISH APPEAL PROCEDURES FOR EMPLOYEES DISCHARGED OR TERMINATED BY THE DIRECTOR OF A DEPARTMENT OF PUBLIC SAFETY; AMENDING SECTIONS 16-2726, 16-2727, 16-2728 AND 16-2729, R.C.M. 1947; AND PROVIDING AN EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 16-2726, R.C.M. 1947, is amended to read as follows:

"16-2726. Department of public safety--supervision by commission. On agreement of the legislative body of a city or town with the county commissioners of the county in which it is located, there may be established, in counties other than first and second class counties, in lieu of a police department and a sheriffs' office, a department of public safety. The department shall be under the supervision of a public safety commission. ~~selected jointly by the county commissioners and the city or town, legislative bodies consisting of not more than seven (7) members.~~ The commission shall consist of three (3), five (5), or seven (7) members. Each member of the commission shall serve a four (4) year term and shall be appointed as provided in this act."

Section 2. There is a new R.C.M. section that reads as follows:

Appointment of public safety commission members. (1) Upon the creation of a three (3) member commission, one (1)member shall be appointed by the legislative body of the city or town, one (1) shall be appointed by the board of county commissioners, and one (1) shall be appointed by the members of the board of county commissioners and the members of the legislative body of the city or town meeting in joint session. In order to be appointed, a candidate for appointment by the joint meeting must receive a majority of the votes of the members of the board of county commissioners and a majority of the votes of the members of the legislative body of the city or town voting on the question of his appointment. Initially, one (1) commission member shall serve a four (4) year term and two (2) commission members shall each serve a two (2) year term. Each commission member shall draw a lot to determine the length of his term.

(2) Upon the creation of a five (5) member commission, two (2) members shall be appointed by the legislative body of the city or town, two (2) shall be appointed by the board of county commissioners, and one (1) shall be appointed by

INTRODUCED BILL

the members of the board of county commissioners and the members of the legislative body of the city or town meeting in joint session. In order to be appointed, a candidate for the appointment to a five (5) member commission by the joint meeting must receive a majority of the votes of the members of the board of county commissioners and a majority of the votes of members of the legislative body of the city or town voting on the question of his appointment. Initially, two (2) commission members shall each serve a four (4) year term and three (3) commission members shall each serve a two (2) year term. Each commission member must draw a lot to determine the length of his term.

(3) Upon the creation of a seven (7) member commission, three (3) members shall be appointed by the legislative body of the city or town, three (3) shall be appointed by the board of county commissioners, and one (1) shall be appointed by the members of the board of county commissioners and the members of the city or town meeting in joint session. In order to be appointed, a candidate for the appointment to a seven (7) member commission by the joint meeting must receive a majority of the votes of the members of the board of county commissioners and a majority of the votes of the members of the legislative body of the city or town voting on the question of his appointment. Initially, three (3) commission members shall each serve a

four (4) year term and four (4) commission members shall each serve a two (2) year term. Each commission member shall draw a lot to determine the length of his term.

(4) Each commission member shall reside at the time of his appointment within the county if selected by the board of county commissioners or within the city or town by which appointed.

(5) No commission member may be an official of any unit of local government.

Section 3. There is a new R.C.M. section that reads as follows:

Vacancies, Succession -- Compensation. (1) In case of a vacancy for any cause, a new member shall be appointed in the same manner as the person he replaces. A person so appointed shall serve out the unexpired portion of the term of the person he replaces.

(2) The successor for a commission member whose term has expired shall be appointed in the same manner used to appoint the commission member he succeeds.

(3) A member of a public safety commission is eligible for reappointment to the commission at the end of his term.

(4) Members of a public safety commission shall receive no compensation but may receive actual and necessary travel and other expenses incurred in the performance of official duties. Such costs shall be borne by the county if

the commission member is appointed by the board of county commissioners, by the city or town by which appointed, or borne equally by the county and city or town if jointly appointed.

Section 4. There is a new R.C.M. section that reads as follows:

Organization -- selection and duties of chairman -- meetings. (1) Not later than sixty (60) days after the commission is authorized, the members of the commission shall meet and organize at a time which shall be set by the board of county commissioners and the legislative body of the city or town.

(2) At the first meeting of the commission, the member jointly appointed by the board of county commissioners and the legislative body of the city or town shall be designated by the commission to serve as temporary chairman. As its first official act, the commission members shall select a chairman and vice-chairman from their own number.

(3) The chairman of the commission shall preside over all meetings and hearings of the commission. In the absence or inability of the chairman, the vice-chairman shall preside over all meetings and hearings of the commission.

(4) Meetings of the commission shall be held upon call of the chairman, the vice-chairman in the absence or inability of the chairman, or a majority of the commission

members. Hearings in all cases involving employee discharge or termination shall be held upon request of any employee so discharged or terminated.

Section 5. There is a new R.C.M. section that reads as follows:

Application to existing commissions. Upon its passage and approval, this act shall apply to all commissions that supervise a department of public safety. The members of all such commissions shall draw lots to determine the length of their respective terms.

Section 6. Section 16-2727, R.C.M. 1947, is amended to read as follows:

"16-2727. Sheriff as director--appointed or elected. The director of the department of public safety shall be the sheriff who may be elected, or may be appointed by the public safety commission~~, in the event of municipal-county government,~~ if the form of county government provides for an appointed sheriff. A director so appointed shall receive a majority of the votes of the public safety commission members voting on the question of his appointment."

Section 7. Section 16-2728, R.C.M. 1947, is amended to read as follows:

"16-2728. Powers and duties of officers, patrolmen and director. Officers and patrolmen of the city or town police department and deputies of the county sheriffs' office shall

be subordinate to the director and shall have the power and perform the duties conferred on and required of police officers and patrolmen in cities and towns and of sheriffs' deputies in counties, as required by state law and municipal ordinance. The director shall have the powers and perform the duties conferred on and required of sheriffs, ~~and~~ police officers~~.~~, and chiefs of police except in cases involving the discharge or termination of employment of subordinate employees.

(1) "Employee" or "subordinate employee" means, but are not limited to, any officer or patrolman of the city or town police department, deputy of the county sheriff's office, or any person employed as a clerk, dispatcher, or secretary by the department of public safety or so employed by the city or town police department or the county sheriff's office prior to the establishment of the department of safety.

(2) In all cases involving the discharge or the termination of employment of any subordinate employee by the director of the department of public safety, such employee is entitled to a full hearing as provided in this act."

Section 8. There is a new R.C.M. section that reads as follows:

Hearing procedure for an employee discharged by an appointed director. (1) A director appointed by the public

safety commission shall at the time of the discharge or termination of the employment of any subordinate employee provide such employee a written statement subscribed and sworn to by the director setting forth the cause or causes for the discharge or termination of employment.

(2) Within thirty (30) days from the date of discharge or termination of his employment such employee may make application to the public safety commission for a hearing before the commission on the charges resulting in the employee's discharge or termination of employment. Such employee may be present at the hearing in person and may be represented by legal counsel. The commission shall keep a record of the proceedings in such cases and the records shall be a matter of public record. For the purpose of keeping a record of the proceedings in such a case, the department of public safety shall provide the commission with a person qualified to keep a record of the proceedings. Such person may be an employee of the department.

(3) The commission shall, after the conclusion of the hearing, decide whether the charges resulting in the employee's discharge or termination of employment have been proven.

(4) The commission shall have the power in all cases, wherein a majority of the commission members find the charges not proven, to reinstate any employee at the same

salary that employee received prior to discharge or termination of employment.

(5) In all cases wherein a majority of the commission members find the charges proven, the employee may appeal the decision of the commission to the district court of the county wherein the employee was employed. Such appeal must be initiated within sixty (60) days of the ruling of the commission.

Section 9. There is a new R.C.M. section that reads as follows:

Hearing procedure for an employee discharged by an elected director. (1) A director who is elected shall at the time of the discharge or termination of employment of any subordinate employee be required to follow the procedures of notice required of an appointed director.

(2) Any employee discharged or terminated by an elected director is entitled to a hearing before the public safety commission.

(3) The public safety commission shall, after the conclusion of the hearing, decide whether the charges resulting in the employee's discharge or termination have been proven.

(4) The commission may request that the elected director reinstate an employee in all cases wherein a majority of the commission members find the charges not

proven. The director may deny such a request for reinstatement but shall provide the commission with a written statement subscribed and sworn to by the director setting forth the reason or reasons for the refusal to reinstate the discharged or terminated employee. Such written statement shall become a part of the records of the proceedings of the commission and shall be open to public scrutiny.

(5) In all cases wherein the commission finds the charges not proven, but the elected director refuses to reinstate the discharged or terminated employee, or cases wherein a majority of the commission members find the charges proven, the employee may appeal the decision in the manner provided in section 8 of this act.

Section 10. There is a new R.C.M. section that reads as follows:

Reinstatement of a discharged employee who prevails in district court. In the event that an employee prevails in an appeal to the district court he shall be entitled to be reinstated to the same position he held and at the same salary he received prior to his discharge or termination by the director.

Section 11. Section 16-2729, R.C.M. 1947, is amended to read as follows:

"16-2729. Salaries. The provisions of section 25-605,

R.C.M. 1947, notwithstanding, the salaries of the director and employees of the department of public ~~law--enforcement~~ safety shall be established by the public safety commission and shall be paid by the city or town with the board of county commissioners ~~of the county~~. Said salaries in any event shall not be less than that specified in section 25-605, R.C.M. 1947."

Section 12. Effective date. This act is effective on its passage and approval.

-End-

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(see exhibit III).

Opponent Largy McDonald, Anaconda Company, said that this would apple to people already covered by federal regulations, and requested an amendment to exempt them, on page 2, line 24, following "Act.", by inserting "Nothing in this act applies to labor violations preempt by federal law or regulation."

HB 399--SPONSOR: Hershel Robbins, district 46, said this bill would revi: the powers of the commission of public safety; and to establish appeal procedures for employees discharged by the director of the Department of Public Safety. Under present law, there is no grieyance procedure for any employee who is fired by the director Under this bill, the public safety commission may reinstate any employee discharged by the director, if the commission finds the charges not valid (see exhibit IV). Dave Wanzenried, Helena, explained that the present laws that deal with the public safety commission are vague, and this act would set policies for the department, and appeal procedures for the employees. Dan Mizner, League of Cities, said that they supported the bill. Dean Zinnecker, Assn. of Counties, and Rep. Ernie Dassinger, district 50, also spoke in support.

Opponent Cap Bryant, Sheriff & Peace Officers Assn., said this would cause a patchwork of law enforcement over the entire state, as many of the larger cities wou ld not be covered, and felt they should be standardized. John Krsul, Cascade County Sheriff, referred to page 11, section 12, to the effective date. He said that sheriff's employed now are under the impression that they will be in office for four years, and this would cause to termina them. He said that they were getting away from the elector-idea, and felt that sheriffs should be elected and not appointed. Don Judge, AFSCME, opposed the bill as it would take away collective bargaining rights, on page 7, section 1 (2).

In closing, Robbins said that the opposition spoken on does not really refer to the bill. All the bill does is ask that 3rd clas cities join their forces; refers only to those sheriffs that are appointed; and protects those people in the jobs now. The bill has nothing to do with setting policies.

Under discussion, Ellis asked why 1st and 2nd class cities were eliminated, and Mizner replied that they were included in a different system, and that there was a definite segregation between the two classes. Travis asked if this would effect the election of a sheriff and Mizner said no, that they would continue to ser

HB 611--SPONSOR: Duane Johnson, District 77, said this would correct present substandard conditions, by increasing the public employe contrbution to insurance for their employees to $20 a month. Proponent Don Judge, AFSCME, said that this wasn't a negotiable matter with the limitation factor in the law, and by removing th limitation of contributions offered opens up collective bargaini (see exhibit V).

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HB 95--Magone, sponsor, submitted amendments to the committee that were drafted by Fred Barrett, Eployment Security Division, and Don Judge, ASCME, AFL-CIO,.Magone said that this would exempt teachers on summer leave, and elected officials.

FEDERICO MOVED HB 95 AS AMENDED DO PASS, SECONDED BY JOHNSON. MOTION CARRIED WITH ALL IN FAVOR EXCEPT ELLERD AND BABCOCK OPPOSED

HB 173--BABCOCK MOVED HB 173 AS AMENDED DO PASS, SECONDED BY ELLIS. The amendments submitted were to correct errors in drafting. MOTION CARRIED UNANIMOUSLY.

HB 223--The staff attorney for the committee explained that in order to pay for the sick leave, a floating fund would have to be established, so that an employee transferred between departments, withi the state government, would not lose his sick leave. This would be financed by a levy on property value. He submitted an amendmer that would do this.

FEDERICO MOVED HB 223 AS AMENDED DO PASS, SECONDED BY GILLIGAN. All the amendment does is to allow the local government to raise the mill levy to pay for this. Kimble said this reflects the payment of sick leave, and not the use of sick leave. Guthrie said that the idea of sick leave is to use it when needed, and no to be paid for not using it. Johnson said it would be just as costly for a firm to replace the employee who takes his sick leav as it is to pay him the accumulated sick leave. Don Judge, AFSCM explained that there would be no ceiling on the accumulation of sick leave, but benefits would only go back to 1971. Ellis felt that there should be a ceiling limit. MOTION CARRIED WITH ALL IN FAVOR EXCEPT GUTHRIE, ELLERD, BABCOCK, AND ELLIS OPPOSED.

HB 399--GUTHRIE MOVED TO REFER THIS BILL TO LOCAL GOVERNMENT COMMITTEE, SECONDED BY BABCOCK. Dassinger explained that this bill would only be temporary, to fill in the loopholes at the present time. GUTHRIE RETRACTED HIS MOTION AND MOVED TO DEFER ACTION. MOTION CARRIED UNANIMOUSLY.

There being no further business, the meeting was adjourned to reconvene February 20, 1975 at 7:30 p.m. in the House Chambers.

Gary Kimble

GARY N. KIMBLE, Chairman

Gloria Wong

Gloria Wong, Secretary

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2-19-75
Rep. Gerbino

HOUSE BILL NO. 399

A BILL FOR AN ACT ENTITLED: "AN ACT TO REVISE THE POWERS OF THE COMMISSION SUPERVISING A DEPARTMENT OF PUBLIC SAFETY; TO ESTABLISH APPEAL PROCEDURES FOR EMPLOYEES DISCHARGED OR TERMINATED BY THE DIRECTOR OF THE DEPARTMENT OF PUBLIC SAFETY..."

This bill seeks to impart order where ambiguity now exists and clarity where confusion now exists. Under present law (16-2726) in a county of other than the first or second class, if the members of the legislative body of a city or town and the board of county commissioners agree, they may establish a department of public safety. Such a department of public safety is a consolidated law enforcement agency -- like what now exist in Roundup and Musselshell County and Forsyth and Rosebud County. Such a department serves as the law enforcement agency of both the county and city or cities involved.

Under present law, such a department is under the supervision of a "commission" and herein begin the problems. The "commission" has no real powers of supervision. The only mention of a power to be exercised by such a commission is in 16-2729, which in pertinent part reads "....the salaries of the director and the employees of the department of public law enforcement shall be established by the commission." This reference is indeed strange since the commission is authorized by law to supervise a department of public safety, not a department of public law enforcement.

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The major provisions of my bill are as follows:

1) The first measure proposed is to name the commission that supervises a department of public safety; rather than "commission", for the sake of clarity, under the proposed bill a commission that supervises a department of public safety would be called a "public safety commission".

2) Under present law no more than seven members comprise such a "commission"; my bill proposes that a public safety commission be comprised of three (3), five (5), or seven (7) members. Each member would serve a four year term.

The size of the commission would be established at the time the city council and the board of county commissioners agree to form a department of public safety. It is important to note here that the board of county commissioners would appoint as close to one-half of the members as possible, while the city council would select the other half. You will note that all possible sizes of public safety commissions is an odd number -- and since, for example, a board of county commissioners can not find 2 1/2 persons to appoint to a five member commission, a five member commission would be appointed as follows: [I refer to Section 2, page 2, line 22:]

2 appointed by the board of county commissioners

2 appointed by the city council

1 appointed jointly by the board of county commissiors and the city council. Such an appointee would be required to receive concurrent majorities of the board of county commissioners and the city council.

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The same appointment procedure would be followed for all three sizes of commissions -- one member would always be jointly appointed. All members would draw lots to determine the length of their initial terms -- upon creation of a five member commission, 2 members would serve 4 year terms and 3 members would serve 2 year terms. In the event of a vacancy, the successor would be appointed in the manner as the person he replaces.

3) Section 3 and 4 deal with organization of the commission; present law provides for none. Public safety commission members would receive reimbursement for necessary and actual travel or other expenses. The county would bear the expenses of commission members appointed by the county, by the city if appointed by the city council, and borne by both if the member is jointly appointed. In this way the city would not have to pay for the travel expenses of a commission member who might have to drive from the far corner of the county to attend meetings.

4) Under present law the director of the department of public safety is the person who was the county sheriff prior to the consolidation of the law enforcement agencies. Such a director may be elected or appointed. Section 6, line 17, page 6 clarifies the conditions under which the director may be appointed.

Under present law the director is appointed by the supervisory commission "in the event of municipal county government." Since it is not clear what "municipal county government" is, the

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bill proposes to amend the passage to read that the director may be appointed "if the term of county government provides for an elected sheriff". County sheriffs may be appointed under present law (16-5015). If the sheriff is appointed, he will be appointed by the public safety commissioner, by a majority of the votes of the commission members voting on the question of his appointment.

5) Perhaps the most important measures in this bill are found on pages 7 through 10. Sections 8 through 10 outline a procedure by which any employee discharged by the director of the department of public safety may receive a hearing on the charges, which resulted in his discharge, before the public safety commission. Under present law there is no grievance procedure for any employee of a department of public safety who is fired by the director of the department.

Since there are two different, basic relationships that can develop between a director of a department of public safety and a public safety commission -- because the director may be independently elected or may be appointed by the commission -- it is necessary to provide for a variation of powers the public safety commission may exercise in hearing and deciding the charges against an employee. Both procedures are identical except for the power of the public safety commission may exercise in reinstating an employee that it finds has been unjustifiably discharged.

Section 8, pages 7 through 9 set out the hearing procedures for an employee <u>discharged by an appointed director</u>.

(1) Written notice of charges must be provided to the discharged employee.

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(2) Application of employee to the public safety commission for a hearing.

(3) Deliberations of commission -- must decide if charges were proven or not proven after the hearing.

(4) If the commission finds the charges not proven, it may reinstate the employee at the same salary and position he held prior to discharge.

(5) If the charges are found proven by the commission, the employee may appeal to the district court, where a decision for reinstatement would also be binding, as it is now under law.

Section 9 provides hearing procedures for employees discharged by an elected director, which is the same as the previous procedure except sub-paragraphs 4 and 5.

Sub-paragraph 4 reads that if the public safety commission finds the charges not proven, it may request that an elected director reinstate a discharged employee. In such a case the director may refuse but he must provide the commission with a written statement of the reason or reasons for his refusal to reinstate the employee. Such a statement becomes a part of the public record, where the voters can examine it.

Sub-paragraph 5 provides that if the public safety commission finds the charges not proven but the director refuses to reinstate the discharged employee or if the commission finds the charges proven, the employee may appeal to the district court. If the employee then prevails in district court, he would be reinstated to the salary and the position he held prior to discharge.

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Appeal to the district court for discharged deputy sheriffs is provided for under state law presently (16-3705(7)), as is reinstatement to full pay and prior position (16-3705(7)). Only deputy sheriffs are so covered and because members of the police department exercise the duties of deputy sheriffs after the creation of a department of public safety, they should also be entitled to the priviledge of appeal. My bill would extend the priviledge of appeal to all employees of the department of public safety. All employees are not now covered and this has been a problem in Roundup....

It is important to emphasize the different relationships again. A public safety commission may reinstate any employee discharged by an appointed director, if the commission finds the charges against such an employee not proven. On the other hand, a public safety commission may only request that an elected director reinstate a discharged employee under identical circumstances.

5) The last provision of my bill proposes a housekeeping amendment to 16-2729 to correct an oversight. As I mentioned before, a consolidated city-county law enforcement agency is called a department <u>of public safety</u>. You will note in Section II, line 2, page 11 there is mention by present law of a department <u>of public law enforcement</u>, which is apparently in reference to a department of public safety. [If any questions arise, refer questions to page 82 of the Cumulative Pocket Supplement to the Index of the Revised Codes under "Department of Public Safety."] In order

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to assure that the supervisory commission of a department of public safety is the body that establishes the salaries of the members of such department, my bill amends Section 11, line 2, page 11 to read "department of public safety" rather than "department of public law enforcement."

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SECONDED BY KELLY, MOTION CARRIED UNANIMOUSLY.

FEDERICO MOVED HB 450 AS AMENDED DO PASS, SECONDED BY KELLY. MOTION CARRIED WITH ALL IN FAVOR EXCEPT ELLERD, BABCOCK, GUTHRIE, AND SIVERTSEN OPPOSED.

HB 234--Sivertsen submitted amendments for a new schedule of placement fees for private employment agencies, and also an amendment mandating that any complaints filed shall be sent to that private agency involved, or to the MT Private Employment Agency Assn. He said that many of the agencies found out at a later date that these complaints had been filed, but knew nothing of them at the time of the complaint (see exhibit VII for amendments).

SIVERTSEN MOVED HIS AMENDMENTS DO PASS, SECONDED BY ELLIS. MOTION CARRIED WITH ALL IN FAVOR EXCEPT KELLY OPPOSED.

SIVERTSEN MOVED HB 234 AS AMENDED DO PASS, SECONDED BY ELLIS. Sivertsen said he conferred with Rep. Mular, sponsor, the labor union representatives, and Bob Helding on the amendments. He fel that the bill was workable, by not putting any agency out of business, and takes away some of the discrimination. MOTION CARRIED WITH ALL IN FAVOR EXCEPT BABCOCK AND KELLY OPPOSED.

HB 399--FEDERICO MOVED AMENDMENTS DO PASS, SECONDED BY MAGONE. These are the amendments suggested by Rep. Robbins, sponsor (see exhibi VIII). MOTION CARRIED UNANIMOUSLY.

FEDERICO MOVED HB 399 AS AMENDED DO PASS, SECONDED BY DASSINGER. MOTION CARRIED UNANIMOUSLY.

HB 573--BABCOCK MOVED HB 573 DO PASS.

BAETH MOVED A SUBSTITUTE MOTION HB 573 DO NOT PASS. MOTION CARRIED WITH ELLERD, BABCOCK, ELLIS, SIVERTSEN AND GUTHRIE OPPOSE

HB 633--Baeth submitted amendments to take out the word "staff", and re-emphasizing "department" where referring to the Department of Labor.

BAETH MOVED AMENDMENTS DO PASS, SECONDED BY MAGONE. MOTION CARRIE UNANIMOUSLY.

KELLY MOVED HB 633 AS AMENDED DO PASS, SECONDED BY DASSINGER. MOTION CARRIED WITH ALL IN FAVOR EXCEPT ELLERD, BABCOCK, AND SIVERTSEN OPPOSED.

There being no further business the meeting was adjourned that evening on adjournment of the Committee of the Whole meeting.

GARY N. KIMBLE, Chairman

Gloria Wong, Secretary

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MINUTES OF THE MEETING
LOCAL GOVERNMENT COMMITTEE
MONTANA STATE SENATE

March 10, 1975

The thirty-fourth meeting of the Local Government Committee was called to order by Chairman Romney on the above date in Room 410 at 11:07 A.M.

ROLL CALL: All members were present with Senator McCallum excused at 11:16 A.M. and Senator Murphy excused at 12:05 P.M.

The following witnesses were present to testify at the meeting:

Representative Yardley, sponsor of HB 138
Dean Zinnecker, Montana Association of Counties
Joe DeLong, Montana Association of Counties
L. W. Fasbender, Cascade County Commissioner
Cap Bryant, Montana Sheriffs and Peace Officers lobbyist
Dan Mizner, Montana League of Cities and Towns
Representative Robbins, sponsor of HB 399
Dave Wanzenreid, Self
Representative Fagg, sponsor of HB 197
Larry Gallagher, Urban Renewal Director for Helena
Edward Gallagher, Community Development Dept. of Anaconda
John Toole, Missoula Action Group
Polly Prchal, City Council of Billings
B. Dean Holmes, City of Miles City Mayor
Cliff Christian, Montana Association of Realtors

CONSIDERATION OF HOUSE BILL 138: Representative Yardley explained that his bill was introduced at the request of the Montana Association of Counties and would allow the county governing body (county commissioners) to set their own salary guidelines. He felt this is needed because oftentimes the commissioners are underpaid comparing salary received to number of hours worked. Dean Zinnecker supported the bill and outlined the four basic changes it would result in if passed. Joe DeLong, L. W. Fasbender, Cap Bryant, and Dan Mizner also supported the legislation.

There were no opponents.

The Committee questioned the witnesses.

CONSIDERATION OF HOUSE BILL 399: Representative Robbins testified that his bill would delineate the powers of a previously established grievance committee. Dave Wanzenreid further explained the bill and supported it. Dean Zinnecker and Dan Mizner also supported this legislation.

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There were no opponents.

The Committee questioned the witnesses.

CONSIDERATION OF HOUSE BILL 197: Representative Fagg explained that his bill was to correct an oversight in a bill passed last session concerning taxes within an Urban Renewal area. Dan Mizner introduced Larry Gallagher of the Helena Urban Renewal Program who supported the bill. Ed Gallagher, John Toole, Polly Prcahl, Dean Holmes, and Cliff Christian also gave supportive testimony.

There were no opponents.

The Committee questioned the witnesses.

DISPOSITION OF BILLS:

HOUSE BILL 197: Senator Watt made a motion that HB 197 BE CONCURRED IN. Seconded by Senator Goodover. Motion carried.

HOUSE BILL 399: Senator Goodover made a motion that HB 399 BE CONCURRED IN. Seconded by Senator Thiessen. Motion carried.

ADJOURN: There being no further business, the meeting was adjourned at 12:30 P.M.

Miles Romney

MILES ROMNEY, Chairman

MR:dg

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ROLL CALL

LOCAL GOVERNMENT COMMITTEE

44th LEGISLATIVE SESSION 1975

Date 3-10-7

ME	PRESENT	ABSENT	EXCUSED
ILES ROMNEY, CHAIRMAN	✓		
. E. CETRONE, V. CHMN.	✓		
ERRY MURPHY	11:50 —		12:05
ORNIE R. THIESSEN	✓		
ROBERT D. WATT	✓		
AT M. GOODOVER	✓		
EORGE McCALLUM	11:15 ✓		11:16
PETER STORY	✓		

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ROBBINS

HOUSE BILL NO. 399

A BILL FOR AN ACT ENTITLED: "AN ACT TO REVISE THE POWERS OF THE COMMISSION SUPERVISING A DEPARTMENT OF PUBLIC SAFETY; TO ESTABLISH APPEAL PROCEDURES FOR EMPLOYEES DISCHARGED OR TERMINATED BY THE DIRECTOR OF THE DEPARTMENT OF PUBLIC SAFETY..."

This bill seeks to impart order where ambiguity now exists and clarity where confusion now exists. Under present law (16-2726) in a county of other than the first or second class, if the members of the legislative body of a city or town and the board of county commissioners agree, they may establish a department of public safety. Such a department of public safety is a consolidated law enforcement agency -- like what now exist in Roundup and Musselshell County and Forsyth and Rosebud County. Such a department serves as the law enforcement agency of both the county and city or cities involved.

Under present law, such a department is under the supervision of a "commission" and herein begin the problems. The "commission" has no real powers of supervision. The only mention of a power to be exercised by such a commission is in 16-2729, which in pertinent part reads "....the salaries of the director and the employees of the department of public law enforcement shall be established by the commission." This reference is indeed strange since the commission is authorized by law to supervise a department of public safety, not a department of public law enforcement.

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The major provisions of my bill are as follows:

1) The first measure proposed is to name the commission that supervises a department of public safety; rather than "commission", for the sake of clarity, under the proposed bill a commission that supervises a department of public safety would be called a "public safety commission".

2) Under present law no more than seven members comprise such a "commission"; my bill proposes that a public safety commission be comprised of three (3), five (5), or seven (7) members. Each member would serve a four year term.

The size of the commission would be established at the time the city council and the board of county commissioners agree to form a department of public safety. It is important to note here that the board of county commissioners would appoint as close to one-half of the members as possible, while the city council would select the other half. You will note that all possible sizes of public safety commissions is an odd number -- and since, for example, a board of county commissioners can not find 2 1/2 persons to appoint to a five member commission, a five member commission would be appointed as follows: I refer to Section 2, page 2, line 22:

2 appointed by the board of county commissioners

2 appointed by the city council

1 appointed jointly by the board of county commissiors and the city council. Such an appointee would be required to receive concurrent majorities of the board of county commissioners and the city council.

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The same appointment procedure would be followed for all three sizes of commissions -- one member would always be jointly appointed. All members would draw lots to determine the length of their initial terms -- upon creation of a five member commission, 2 members would serve 4 year terms and 3 members would serve 2 year terms. In the event of a vacancy, the successor would be appointed in the manner as the person he replaces.

3) Section 3 and 4 deal with organization of the commission; present law provides for none. Public safety commission members would receive reimbursement for necessary and actual travel or other expenses. The county would bear the expenses of commission members appointed by the county, by the city if appointed by the city council, and borne by both if the member is jointly appointed. In this way the city would not have to pay for the travel expenses of a commission member who might have to drive from the far corner of the county to attend meetings.

4) Under present law the director of the department of public safety is the person who was the county sheriff prior to the consolidation of the law enforcement agencies. Such a director may be elected or appointed. Section 6, line 17, page 6 clarifies the conditions under which the director may be appointed.

Under present law the director is appointed by the supervisory commission "in the event of municipal county government." Since it is not clear what "municipal county government" is, the

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bill proposes to amend the passage to read that the director may be appointed "if the term of county government provides for an elected sheriff". County sheriffs may be appointed under present law (16-5015). If the sheriff is appointed, he will be appointed by the public safety commissioner, by a majority of the votes of the commission members voting on the question of his appointment.

5) Perhaps the most important measures in this bill are found on pages 7 through 10. Sections 8 through 10 outline a procedure by which any employee discharged by the director of the department of public safety may receive a hearing on the charges, which resulted in his discharge, before the public safety commission. Under present law there is no grievance procedure for any employee of a department of public safety who is fired by the director of the department.

Since there are two different, basic relationships that can develop between a director of a department of public safety and a public safety commission -- because the director may be independently elected or may be appointed by the commission -- it is necessary to provide for a variation of powers the public safety commission may exercise in hearing and deciding the charges against an employee. Both procedures are identical except for the power of the public safety commission may exercise in reinstating an employee that it finds has been unjustifiably discharged.

Section 8, pages 7 through 9 set out the hearing procedures for an employee <u>discharged by an appointed director</u>.

(1) Written notice of charges must be provided to the discharged employee.

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(2) Application of employee to the public safety commission for a hearing.

(3) Deliberations of commission -- must decide if charges were proven or not proven after the hearing.

(4) If the commission finds the charges not proven, it may reinstate the employee at the same salary and position he held prior to discharge.

(5) If the charges are found proven by the commission, the employee may appeal to the district court, where a decision for reinstatement would also be binding, as it is now under law.

Section 9 provides hearing procedures for employees discharged by an elected director, which is the same as the previous procedure except sub-paragraphs 4 and 5.

Sub-paragraph 4 reads that if the public safety commission finds the charges not proven, it may request that an elected director reinstate a discharged employee. In such a case the director may refuse but he must provide the commission with a written statement of the reason or reasons for his refusal to reinstate the employee. Such a statement becomes a part of the public record, where the voters can examine it.

Sub-paragraph 5 provides that if the public safety commission finds the charges not proven but the director refuses to reinstate the discharged employee or if the commission finds the charges proven, the employee may appeal to the district court. If the employee then prevails in district court, he would be reinstated to the salary and the position he held prior to discharge.

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Appeal to the district court for discharged deputy sheriffs is provided for under state law presently (16-3705(7)), as is reinstatement to full pay and prior position (16-3705(7)). Only deputy sheriffs are so covered and because members of the police department exercise the duties of deputy sheriffs after the creation of a department of public safety, they should also be entitled to the priviledge of appeal. My bill would extend the priviledge of appeal to all employees of the department of public safety. All employees are not now covered and this has been a problem in Roundup....

It is important to emphasize the different relationships again. A public safety commission may reinstate any employee discharged by an appointed director, if the commission finds the charges against such an employee not proven. On the other hand, a public safety commission may only request that an elected director reinstate a discharged employee under identical circumstances.

5) The last provision of my bill proposes a housekeeping amendment to 16-2729 to correct an oversight. As I mentioned before, a consolidated city-county law enforcement agency is called a department <u>of public safety</u>. You will note in Section II, line 2, page 11 there is mention by present law of a department <u>of public law enforcement</u>, which is apparently in reference to a department of public safety. [If any questions arise, refer questions to page 82 of the Cumulative Pocket Supplement to the Index of the Revised Codes under "Department of Public Safety."] In order

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to assure that the supervisory commission of a department of public safety is the body that establishes the salaries of the members of such department, my bill amends Section 11, line 2, page 11 to read "department of public safety" rather than "department of public law enforcement."

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NAME DAVE WANZENRIED Bill No. 399

ADDRESS HELENA, MONTANA Date 3-10-75

WHOM DO YOU REPRESENT? SELF

SUPPORT X OPPOSE AMEND

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments: DRAFTED THE BILL UPON THE REQUEST OF REPRESENTATIVE HERSHEL ROBBINS OF ROUNDUP.

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SENATE COMMITTEE LOCAL GOVERNMENT

Date March 10, 1975 House Bill No. 399 Time 12:16 P.M.

NAME	YES	NO
V. E. CETRONE, VICE CHAIRMAN		
TERRY MURPHY		
CORNIE R. THIESSEN	✓	
ROBERT D. WATT	✓	
PAT M. GOODOVER	✓	
GEORGE McCALLUM		
PETER STORY	✓	
MILES ROMNEY, CHAIRMAN	✓	

Secretary

Chairman

Motion: Be Concurred In

(include enough information on motion--put with yellow copy of committee report.)

HOUSE BILL NO. 399

INTRODUCED BY ROBBINS, DASSINGER, DAY, MCFADDEN, JAMES MOORE, CERKE, JACK MOORE, FABREGA

A BILL FOR AN ACT ENTITLED: "AN ACT TO REVISE THE POWERS OF THE COMMISSION SUPERVISING A ~~CITY~~ DEPARTMENT OF PUBLIC SAFETY; TO ESTABLISH APPEAL PROCEDURES FOR EMPLOYEES DISCHARGED OR TERMINATED BY THE DIRECTOR OF A DEPARTMENT OF PUBLIC SAFETY; AMENDING SECTIONS 16-2726, 16-2727, 16-2728 AND 16-2729, R.C.M. 1947~~, AND PROVIDING AN EFFECTIVE DATE~~."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 16-2726, R.C.M. 1947, is amended to read as follows:

"16-2726. Department of public safety--supervision by commission. On agreement of the legislative body of a city or town with the county commissioners of the county in which it is located, there may be established, in counties other than first and second class counties, in lieu of a police department and a sheriffs' office, a department of public safety. The department shall be under the supervision of a public safety commission. ~~selected jointly by the county commissioners and the city or town, legislative bodies consisting of not more than seven (7) members.~~ The commission shall consist of three (3), five (5), or seven (7) members. Each member of the commission shall serve a four (4) year term and shall be appointed as provided in this act."

Section 2. There is a new R.C.M. section that reads as follows:

Appointment of public safety commission members. (1) Upon the creation of a three (3) member commission, one (1) member shall be appointed by the legislative body of the city or town, one (1) shall be appointed by the board of county commissioners, and one (1) shall be appointed by the members of the board of county commissioners and the members of the legislative body of the city or town meeting in joint session. In order to be appointed, a candidate for appointment by the joint meeting must receive a majority of the votes of the members of the board of county commissioners and a majority of the votes of the members of the legislative body of the city or town voting on the question of his appointment. Initially, one (1) commission member shall serve a four (4) year term and two (2) commission members shall each serve a two (2) year term. Each commission member shall draw a lot to determine the length of his term.

(2) Upon the creation of a five (5) member commission, two (2) members shall be appointed by the legislative body of the city or town, two (2) shall be appointed by the board

REFERENCE BILL

of county commissioners, and one (1) shall be appointed by the members of the board of county commissioners and the members of the legislative body of the city or town meeting in joint session. In order to be appointed, a candidate for the appointment to a five (5) member commission by the joint meeting must receive a majority of the votes of the members of the board of county commissioners and a majority of the votes of members of the legislative body of the city or town voting on the question of his appointment. Initially, two (2) commission members shall each serve a four (4) year term and three (3) commission members shall each serve a two (2) year term. Each commission member must draw a lot to determine the length of his term.

(3) Upon the creation of a seven (7) member commission, three (3) members shall be appointed by the legislative body of the city or town, three (3) shall be appointed by the board of county commissioners, and one (1) shall be appointed by the members of the board of county commissioners and the members of the city or town meeting in joint session. In order to be appointed, a candidate for the appointment to a seven (7) member commission by the joint meeting must receive a majority of the votes of the members of the board of county commissioners and a majority of the votes of the members of the legislative body of the city or town voting on the question of his appointment.

Initially, three (3) commission members shall each serve a four (4) year term and four (4) commission members shall each serve a two (2) year term. Each commission member shall draw a lot to determine the length of his term.

(4) Each commission member shall reside at the time of his appointment within the county if selected by the board of county commissioners or within the city or town by which appointed.

(5) No commission member may be an official of any unit of local government.

Section 3. There is a new R.C.M. section that reads as follows:

Vacancies, succession -- compensation. (1) In case of a vacancy for any cause, a new member shall be appointed in the same manner as the person he replaces. A person so appointed shall serve out the unexpired portion of the term of the person he replaces.

(2) The successor for a commission member whose term has expired shall be appointed in the same manner used to appoint the commission member he succeeds.

(3) A member of a public safety commission is eligible for reappointment to the commission at the end of his term.

(4) Members of a public safety commission shall receive no compensation but may receive actual and necessary travel and other expenses incurred in the performance of

official duties. Such costs shall be borne by the county if the commission member is appointed by the board of county commissioners, by the city or town by which appointed, or borne equally by the county and city or town if jointly appointed.

Section 4. There is a new R.C.M. section that reads as follows:

Organization -- selection and duties of chairman -- meetings. (1) Not later than sixty (60) days after the commission is authorized, the members of the commission shall meet and organize at a time which shall be set by the board of county commissioners and the legislative body of the city or town.

(2) At the first meeting of the commission, the member jointly appointed by the board of county commissioners and the legislative body of the city or town shall be designated by the commission to serve as temporary chairman. As its first official act, the commission members shall select a chairman and vice-chairman from their own number.

(3) The chairman of the commission shall preside over all meetings and hearings of the commission. In the absence or inability of the chairman, the vice-chairman shall preside over all meetings and hearings of the commission.

(4) Meetings of the commission shall be held upon call of the chairman, the vice-chairman in the absence or

inability of the chairman, or a majority of the commission members. Hearings in all cases involving employee discharge or termination shall be held upon request of any employee so discharged or terminated.

Section 5. There is a new R.C.M. section that reads as follows:

Application to existing commissions. Upon its passage and approval, this act shall apply to all commissions that supervise a department of public safety. The members of all such commissions shall draw lots to determine the length of their respective terms.

Section 6. Section 16-2727, R.C.M. 1947, is amended to read as follows:

"16-2727. Sheriff as director--appointed or elected. The director of the department of public safety shall be the sheriff who may be elected, or may be appointed by the public safety commission~~, in the event of municipal-county government~~ if the form of county government provides for an appointed sheriff. A director so appointed shall receive a majority of the votes of the public safety commission members voting on the question of his appointment."

Section 7. Section 16-2728, R.C.M. 1947, is amended to read as follows:

"16-2728. Powers and duties of officers, patrolmen and director. Officers and patrolmen of the city or town police

department and deputies of the county sheriffs' office shall be subordinate to the director and shall have the power and perform the duties conferred on and required of police officers and patrolmen in cities and towns and of sheriffs' deputies in counties, as required by state law and municipal ordinance. The director shall have the powers and perform the duties conferred on and required of sheriffs, ~~and~~ police officers~~,~~, and chiefs of police except in cases involving the discharge or termination of employment of subordinate employees.

(1) "Employee" or "subordinate employee" means, but ~~are~~ IS not limited to, any officer or patrolman of the city or town police department, deputy of the county sheriff's office, or any person employed as a clerk, dispatcher, or secretary by the department of public safety or so employed by the city or town police department or the county sheriff's office prior to the establishment of the department of safety.

(2) In all cases involving the discharge or the termination of employment of any subordinate employee by the director of the department of public safety, such employee is entitled to a full hearing as provided in this act, EXCEPT THAT THOSE EMPLOYEES COVERED UNDER COLLECTIVE BARGAINING AGREEMENTS AS PROVIDED FOR IN CHAPTER 16 OF TITLE 59, R.C.M. 1947, SHALL BE ENTITLED TO USE ANY GRIEVANCE

PROCEDURE PROVIDED FOR WITHIN THE COLLECTIVE BARGAINING AGREEMENT."

Section 8. There is a new R.C.M. section that reads as follows:

Hearing procedure for an employee discharged by an appointed director. (1) A director appointed by the public safety commission shall at the time of the discharge or termination of the employment of any subordinate employee provide such employee a written statement subscribed and sworn to by the director setting forth the cause or causes for the discharge or termination of employment.

(2) Within thirty (30) days from the date of discharge or termination of his employment such employee may make application to the public safety commission for a hearing before the commission on the charges resulting in the employee's discharge or termination of employment. Such employee may be present at the hearing in person and may be represented by legal counsel. The commission shall keep a record of the proceedings in such cases and the records shall be a matter of public record. For the purpose of keeping a record of the proceedings in such a case, the department of public safety shall provide the commission with a person qualified to keep a record of the proceedings. Such person may be an employee of the department.

(3) The commission shall, after the conclusion of the

hearing, decide whether the charges resulting in the employee's discharge or termination of employment have been proven.

(4) The commission shall have the power in all cases, wherein a majority of the commission members find the charges not proven, to reinstate any employee TO THE SAME POSITION HE HELD AND at the same salary ~~that employee~~ HE received prior to discharge or termination of employment.

(5) In all cases wherein a majority of the commission members find the charges proven, the employee may appeal the decision of the commission to the district court of the county wherein the employee was employed. Such appeal must be initiated within sixty (60) days of the ruling of the commission.

Section 9. There is a new R.C.M. section that reads as follows:

Hearing procedure for an employee discharged by an elected director. (1) A director who is elected shall at the time of the discharge or termination of employment of any subordinate employee be required to follow the procedures of notice required of an appointed director.

(2) Any employee discharged or terminated by an elected director is entitled to a hearing before the public safety commission IN THE MANNER PROVIDED IN SECTION 8 OF THIS ACT.

(3) The public safety commission shall, after the conclusion of the hearing, decide whether the charges resulting in the employee's discharge or termination have been proven.

(4) The commission may request that the elected director reinstate an employee in all cases wherein a majority of the commission members find the charges not proven. The director may deny such a request for reinstatement but shall provide the commission with a written statement subscribed and sworn to by the director setting forth the reason or reasons for the refusal to reinstate the discharged or terminated employee. Such written statement shall become a part of the records of the proceedings of the commission and shall be open to public scrutiny.

(5) In all cases wherein the commission finds the charges not proven, but the elected director refuses to reinstate the discharged or terminated employee, or cases wherein a majority of the commission members find the charges proven, the employee may appeal the decision in the manner provided in section 8 of this act.

Section 10. There is a new R.C.M. section that reads as follows:

Reinstatement of a discharged employee who prevails in district court. In the event that an employee prevails in

an appeal to the district court he shall be entitled to be reinstated to the same position he held and at the same salary he received prior to his discharge or termination by the director.

Section 11. Section 16-2729, R.C.M. 1947, is amended to read as follows:

"16-2729. Salaries. The provisions of section 25-605, R.C.M. 1947, notwithstanding, the salaries of the director and employees of the department of public ~~law enforcement~~ safety shall be established by the public safety commission and shall be paid by the city or town with the board of county commissioners ~~of the county~~. Said salaries in any event shall not be less than that specified in section 25-605, R.C.M. 1947."

~~Section 12. Effective date. This act is effective on its passage and approval.~~

-End-